

Cenex - Quincy

FS 33599645

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR GRANT COUNTY

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CENEX HARVEST STATES  
COOPERATIVES,

Defendant.

NO. DE-00TCPER-1815

CONSENT DECREE

TABLE OF CONTENTS

I.	INTRODUCTION .....	3
II.	JURISDICTION.....	4
III.	PARTIES BOUND .....	5
IV.	DEFINITIONS .....	5
V.	STATEMENT OF FACTS .....	5
VI.	WORK TO BE PERFORMED .....	8
VII.	DESIGNATED PROJECT COORDINATORS .....	9
VIII.	PERFORMANCE.....	9
IX.	ACCESS .....	10
X.	SAMPLING, DATA REPORTING, AND AVAILABILITY .....	10
XI.	PROGRESS REPORTS.....	11
XII.	RETENTION OF RECORDS.....	11
XIII.	TRANSFER OF INTEREST IN PROPERTY .....	12
XIV.	RESOLUTION OF DISPUTES.....	12
XV.	AMENDMENT OF CONSENT DECREE .....	13
XVI.	EXTENSION OF SCHEDULE .....	14
XVII.	ENDANGERMENT .....	15
XVIII.	OTHER ACTIONS.....	16
XIX.	INDEMNIFICATION.....	17
XX.	COMPLIANCE WITH APPLICABLE LAWS .....	17

1	XXI.	REMEDIAL AND INVESTIGATIVE COSTS.....	18
2	XXII.	IMPLEMENTATION OF REMEDIAL ACTION .....	19
3	XXIII.	FIVE YEAR REVIEW .....	19
4	XXIV.	PUBLIC PARTICIPATION .....	19
5	XXV.	DURATION OF DECREE .....	20
6	XXVI.	COVENANT NOT TO SUE / REOPENERS .....	21
7	XXVII.	CONTRIBUTION PROTECTION.....	22
8	XXVIII.	CLAIMS AGAINST THE STATE.....	22
9	XXIX.	EFFECTIVE DATE.....	22
10	XXX.	PUBLIC NOTICE AND WITHDRAWAL OF CONSENT.....	22
11		Exhibit A - Site Diagram	
12		Exhibit B - Cleanup Action Plan	
13		Exhibit C - Scope of Work and Schedule	
14		Exhibit D - Public Participation Plan	
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and Cenex Harvest States Cooperatives (Defendant) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires the Defendant to undertake the following remedial action(s):

- (1) Contain soils on Cenex-controlled property via asphalt capping;
- (2) Treat soils on Cenex controlled property with soil vapor extraction technology to remove site hazardous substances;
- (3) Treat site ground water through oxygenation by microsparging and in-situ air stripping;
- (4) Prevent domestic exposure to site ground water by implementation of institutional controls; and
- (5) Monitor the effectiveness of ground water treatment systems through ground water monitoring.

Ecology has determined that these actions are necessary to protect public health and the environment.

B. The complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the parties wish to resolve the issues raised by Ecology's complaint. In addition, the parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, Defendant agrees to its entry and agrees to be bound by its terms.

D. By entering into this Decree, the parties do not intend to discharge nonsettling parties from any liability they may have with respect to matters alleged in the complaint. The

1 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
2 sums expended under this Decree.

3 E. This Decree shall not be construed as proof of liability or responsibility for any  
4 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
5 provided, however, that the Defendant shall not challenge the jurisdiction of Ecology in any  
6 proceeding to enforce this Decree.

7 F. The Court is fully advised of the reasons for entry of this Decree, and good cause  
8 having been shown:

9 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## 10 II. JURISDICTION

11 A. This Court has jurisdiction over the subject matter and over the parties pursuant to  
12 Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

13 B. Authority is conferred upon the Washington State Attorney General by RCW  
14 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public  
15 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious  
16 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be  
17 entered as a consent decree issued by a court of competent jurisdiction.

18 C. Ecology has determined that a release or threatened release of hazardous  
19 substances has occurred at the site that is the subject of this Decree.

20 D. Ecology has given notice to Defendant, as set forth in RCW 70.105D.020(15), of  
21 Ecology's determination that the Defendant is a potentially liable person for the site and that there  
22 has been a release or threatened release of hazardous substances at the site.

23 E. The actions to be taken pursuant to this Decree are necessary to protect public  
24 health, welfare, and the environment.

25 F. Defendant has agreed to undertake the actions specified in this Decree and  
26 consents to the entry of this Decree under the MTCA.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6

2  
3  
4  
5  
6  
7  
8  
9  
0

## 1

2  
3

4  
5  
6  
7

8  
9

0

1  
2  
3

## 4

5  
6

1           Cenex Harvest States Cooperatives is a cooperative corporation incorporated and  
2 headquartered in the State of Minnesota, and licensed to transact business in the State of  
3 Washington.

4           1.       Cenex is the lessee of real property located at 300 Division Street, between 4th  
5 Avenue SE and 6th Avenue SE in the City of Quincy, Grant County, Washington.

6           2.       The real property leased by Cenex Supply and Marketing is owned by Burlington  
7 Northern Railroad. Cenex acquired the assets and took an assignment of the Burlington Northern  
8 Lease for the real property from Western Farmers Association, a now defunct Washington  
9 Cooperative Association, between February and August 1982. Cenex did not conduct an  
10 environmental assessment of the property at the time of the acquisition.

11          3.       Western Farmers Association operated the property as a fumigant/fertilizer plant.  
12 The liquid fertilizer and fumigant plant was built on the property in 1974 by Western Farmers  
13 Association. It operated continuously until dismantling by Cenex in 1991.

14          4.       Cenex constructed a rinsate pond on the property in 1986. This pond accumulated  
15 rinse water until 1988, at which time the pond was drained. The water and rinsate residue were  
16 tested and land applied in Spring, 1990, and the pond and pad were dismantled and backfilled.

17          5.       During the 1980s, fumigants DD, DD with Chlorpicrin, Telone, and Telone C-17  
18 were managed on the property. In the early 1980s, releases of soil fumigants are reported to have  
19 occurred. 1,2-Dichloropropane is a constituent of these fumigants. Fertilizers UAN 32-0-0,  
20 Aqua Ammonia, and 9-30-0 were stored at the property prior to Cenex dismantling the facility in  
21 1992.

22          6.       Between August 1994 and February 1995, all former fumigant storage tanks were  
23 decontaminated and removed by Cenex. In 1997, rinsate pond soils and stockpiled concrete were  
24 removed from the property and the site was covered with gravel.

25          7.       Volatile Organic Compounds, including 1,2-dichloropropane, vinyl chloride, and  
26 chloroform; and fertilizer compounds, including ammonia; have been detected in ground water

1 monitoring wells installed both on the property and downgrading from the property at  
2 concentrations of concern to human health and the environment, and at concentrations exceeding  
3 natural background concentrations in the property vicinity. Following the removal action in (7),  
4 above, soil samples from borings taken on the property indicated the presence of volatile organic  
5 compounds such as 1,2-dichloropropane, and 1,2,3-trichloropropane at levels of concern to  
6 human health and the environment.

7 8. Cenex is an "owner or operator" as defined at RCW 70.105D.020(12) of a  
8 "facility" as defined in RCW 70.105D.020(4).

9 9. The facility is known as the Cenex Supply and Marketing Quincy Rinsate Pond  
10 and Fumigant Plant, or "Cenex/Quincy Site" and is located at 300 Division Street, between 4th  
11 Ave. SE and 6th Ave. SE, in the City of Quincy, Washington, and other areas where hazardous  
12 substances associated with this property have come to be located. It is otherwise located in  
13 Section 8 of Township 20 North, Range 24 East Willamette Meridian, Grant County,  
14 Washington.

15 10. Substances found at the facility as described in (8) above are "hazardous  
16 substances" as defined at RCW 70.105D.020(7). Based on the presence of these hazardous  
17 substances at the facility and all factors known to the Department, there is a release or threatened  
18 release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).

19 11. By letter dated May 14, 1997, Ecology notified Cenex of its status as a  
20 "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

21 12. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require  
22 potentially liable persons to investigate or conduct other remedial actions with respect to the  
23 release or threatened release of hazardous substances, whenever it believes such action to be in  
24 the public interest.

25 13. Based on the foregoing facts, Ecology believes the remedial action required by  
26 this Order is in the public interest.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## VI. WORK TO BE PERFORMED

This Decree contains a program designed to protect public health, welfare and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the site.

This program, which implements the Cleanup Action Plan (Exhibit B) is described by the Scope of Work and Schedule as set forth in Exhibit C to this Decree. Exhibit B establishes the work to be performed to accomplish required remedial actions at the site throughout the duration of this Decree, and Exhibit C establishes the schedule for such remedial actions.

This Decree requires Cenex to undertake the following remedial actions as identified in the Cleanup Action Plan and Scope of Work, according to the Schedule:

1. Cap soils on Cenex controlled property containing chemicals above cleanup standards;
2. Treat site soils using soil vapor extraction, removing hazardous substances to where concentrations of those hazardous substances meet cleanup standards;
3. Treat site ground water using in-situ air stripping and microsparging until ground water meets cleanup standards at the point of compliance;
4. Place use restrictions on properties where ground water impacted by the site exceeds cleanup standards as defined in the Cleanup Action Plan, prohibiting domestic use; and
5. Implement a ground water monitoring system to demonstrate compliance with cleanup levels at the point of compliance.

Defendant agrees not to perform any remedial actions outside the scope of this Decree unless the parties agree to amend the scope of work to cover these actions. All work conducted under this Decree shall be done in accordance with WAC 173-340 unless otherwise provided herein.



1                                   **VII. DESIGNATED PROJECT COORDINATORS**

2           The project coordinator for Ecology is:

3                   Guy J. Gregory  
4                   Senior Hydrogeologist  
5                   Washington Department of Ecology  
6                   Toxics Cleanup Program  
7                   N. 4601 Monroe  
8                   Spokane, WA 99205-1295

9           The project coordinator for Defendant is:

10                   Jerry Eide  
11                   Cenex Harvest States Cooperatives  
12                   P.O. Box 109  
13                   Stevensville, MT 59870

14           Each project coordinator shall be responsible for overseeing the implementation of this  
15   Decree. The Ecology project coordinator will be Ecology's designated representative at the Site.  
16   To the maximum extent possible, communications between Ecology and the Defendant and all  
17   documents, including reports, approvals, and other correspondence concerning the activities  
18   performed pursuant to the terms and conditions of this Decree, shall be directed through the  
19   project coordinators. The project coordinators may designate, in writing, working level staff  
20   contacts for all or portions of the implementation of the remedial work required by this Decree.  
21   The project coordinators may agree to minor modifications to the work to be performed without  
22   formal amendments to this Decree. Minor modifications will be documented in writing by  
23   Ecology.

24           Any party may change its respective project coordinator. Written notification shall be  
25   given to the other parties at least ten (10) calendar days prior to the change.

26                                   **VIII. PERFORMANCE**

          All work performed pursuant to this Decree shall be under the direction and supervision,  
as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and  
expertise in hazardous waste site investigation and cleanup. Any construction work must be  
under the supervision of a professional engineer. Defendant shall notify Ecology in writing as to

1 the identity of such engineer(s) or hydrogeologist(s), or others and of any contractors and  
2 subcontractors to be used in carrying out the terms of this Decree, in advance of their  
3 involvement at the site.

#### 4 IX. ACCESS

5 Ecology or any Ecology authorized representatives shall have the authority to enter and  
6 freely move about all property at the Site at all reasonable times for the purposes of, inter alia:  
7 inspecting records, operation logs, and contracts related to the work being performed pursuant to  
8 this Decree; reviewing Defendant's progress in carrying out the terms of this Decree; conducting  
9 such tests or collecting such samples as Ecology may deem necessary; using a camera, sound  
10 recording, or other documentary type equipment to record work done pursuant to this Decree;  
11 and verifying the data submitted to Ecology by the Defendant. All parties with access to the Site  
12 pursuant to this paragraph shall comply with approved health and safety plans.

#### 13 X. SAMPLING, DATA REPORTING, AND AVAILABILITY

14 With respect to the implementation of this Decree, Defendant shall make the results of all  
15 sampling, laboratory reports, and/or test results generated by it, or on its behalf available to  
16 Ecology and shall submit these results in accordance with Section XI of this Decree.

17 In accordance with WAC 173-340-840(5), sampling data shall be submitted by the  
18 Defendants in an electronic format agreeable to Ecology's site coordinator. These submittals  
19 shall be provided to Ecology in accordance with Section XI of this Decree.

20 If requested by Ecology, Defendant shall allow split or duplicate samples to be taken by  
21 Ecology and/or its authorized representatives of any samples collected by Defendant pursuant to  
22 the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance of  
23 any sample collection or work activity at the site. Ecology shall, upon request, allow split or  
24 duplicate samples to be taken by Defendant or its authorized representatives of any samples  
25 collected by Ecology pursuant to the implementation of this Decree provided it does not interfere  
26

1 with the Department's sampling. Without limitation on Ecology's rights under Section IX,  
2 Ecology shall endeavor to notify Defendant prior to any sample collection activity.

### 3 **XI. PROGRESS REPORTS**

4 Defendant shall submit to Ecology written progress reports which describe the actions  
5 taken to implement the requirements of this Decree within 10 days of receipt of a written request  
6 by Ecology. The progress reports shall include the following:

7 A. A list of on-site activities that have taken place during the month;

8 B. Detailed description of any deviations from required tasks not otherwise  
9 documented in project plans or amendment requests;

10 C. Description of all deviations from the schedule (Exhibit C) during the current  
11 month and any planned deviations in the upcoming month;

12 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
13 compliance with the schedule;

14 E. All raw data (including laboratory analysis) received by the Defendant during the  
15 past month and an identification of the source of the sample;

16 F. A list of deliverables for the upcoming month if different from the schedule; and  
17 Unless otherwise specified, progress reports and any other documents submitted pursuant to this  
18 Decree shall be sent by certified mail, return receipt requested, to Ecology's project coordinator.

### 19 **XII. RETENTION OF RECORDS**

20 Defendant shall preserve, during the pendency of this Decree and for ten (10) years  
21 from the date this Decree is no longer in effect as provided in Section XXV, all records, final  
22 reports, final documents, and underlying data in its possession relevant to the implementation of  
23 this Decree and shall insert in contracts with project contractors and subcontractors a similar  
24 record retention requirement. Upon request of Ecology, Defendant shall make all non-archived  
25 and non-privileged records available to Ecology and allow access for review. All archived  
26 records shall be made available to Ecology within a reasonable period of time.

### **XIII. TRANSFER OF INTEREST IN PROPERTY**

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the site shall be consummated without provision for continued operation and maintenance of any containment system, treatment system, and monitoring system installed or implemented pursuant to this Decree.

Prior to transfer of any legal or equitable interest in all or any portion of the property, and during the effective period of this Decree, Defendant shall serve a copy of this Decree upon any prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property; and, at least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said contemplated transfer.

### **XIV. RESOLUTION OF DISPUTES**

A. In the event a dispute arises as to an approval, disapproval, proposed modification or other decision or action by Ecology's project coordinator, the parties shall utilize the dispute resolution procedure set forth below.

(1) Upon receipt of the Ecology project coordinator's decision, the Defendant has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

(2) The parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(3) Defendant may then request Ecology management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(4) Ecology's Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of the Defendant's

1 request for review. The Program Manager's decision shall be Ecology's final decision on the  
2 disputed matter.

3 B. If Ecology's final written decision is unacceptable to Defendant, Defendant has the  
4 right to submit the dispute to the Court for resolution. The parties agree that one judge should  
5 retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this  
6 Decree. In the event Defendant presents an issue to the Court for review, the Court shall review  
7 the action or decision of Ecology on the basis of whether such action or decision was arbitrary  
8 and capricious and render a decision based on such standard of review.

9 C. The parties agree to only utilize the dispute resolution process in good faith and  
10 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
11 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the  
12 other party may seek sanctions.

13 Implementation of these dispute resolution procedures shall not provide a basis for delay  
14 of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension  
15 or the Court so orders.

#### 16 XV. AMENDMENT OF CONSENT DECREE

17 This Decree may only be amended by a written stipulation among the parties to this  
18 Decree that is entered by the Court or by order of the Court. Such amendment shall become  
19 effective upon entry by the Court. Agreement to amend shall not be unreasonably withheld by  
20 any party to the Decree.

21 Defendant shall submit any request for an amendment to Ecology for approval. Ecology  
22 shall indicate its approval or disapproval in a timely manner after the request for amendment is  
23 received. If the amendment to the Decree is substantial, Ecology will provide public notice and  
24 opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does  
25 not agree to any proposed amendment, the disagreement may be addressed through the dispute  
26 resolution procedures described in Section XIV of this Decree.

**1**

2

7

2

5

9

1

2

3

1 C. Ecology may extend the schedule for a period not to exceed ninety (90) days,  
2 except where an extension is needed as a result of:

3 (1) Delays in the issuance of a necessary permit which was applied for in a  
4 timely manner; or

5 (2) Other circumstances deemed exceptional or extraordinary by Ecology; or

6 (3) Endangerment as described in Section XVI.

7 Ecology shall give Defendant written notification in a timely fashion of any extensions  
8 granted pursuant to this Decree.

### 9 XVII. ENDANGERMENT

10 In the event Ecology determines that activities implementing or in noncompliance with  
11 this Decree, or any other circumstances or activities, are creating or have the potential to create a  
12 danger to the health or welfare of the people on the site or in the surrounding area or to the  
13 environment, Ecology may order Defendant to stop further implementation of this Decree for  
14 such period of time as needed to abate the danger or may petition the Court for an order as  
15 appropriate. During any stoppage of work under this section, the obligations of Defendant with  
16 respect to the work under this Decree which is ordered to be stopped shall be suspended and the  
17 time periods for performance of that work, as well as the time period for any other work  
18 dependent upon the work which is stopped, shall be extended, pursuant to Section XVI of this  
19 Decree, for such period of time as Ecology determines is reasonable under the circumstances.

20 In the event Defendant determines that activities undertaken in furtherance of this Decree  
21 or any other circumstances or activities are creating an endangerment to the people on the site or  
22 in the surrounding area or to the environment, Defendant may stop implementation of this Decree  
23 for such period of time necessary for Ecology to evaluate the situation and determine whether  
24 Defendant should proceed with implementation of the Decree or whether the work stoppage  
25 should be continued until the danger is abated. Defendant shall notify Ecology's project  
26 coordinator as soon as possible, but no later than twenty-four (24) hours after such stoppage of

1 work, and thereafter provide Ecology with documentation of the basis for the work stoppage. If  
2 Ecology disagrees with the Defendant's determination, it may order Defendant to resume  
3 implementation of this Decree. If Ecology concurs with the work stoppage, the Defendant's  
4 obligations shall be suspended and the time period for performance of that work, as well as the  
5 time period for any other work dependent upon the work which was stopped, shall be extended,  
6 pursuant to Section XVI of this Decree, for such period of time as Ecology determines is  
7 reasonable under the circumstances. Any disagreements pursuant to the clause shall be resolved  
8 through the dispute resolution procedures in Section XIV.

#### 9 XVIII. OTHER ACTIONS

10 Ecology reserves its rights to institute remedial action(s) at the site and subsequently  
11 pursue cost recovery, and Ecology reserves its rights to issue orders and/or penalties or take any  
12 other enforcement action pursuant to available statutory authority under the following  
13 circumstances:

14 (1) Where Defendant fails, after notice, to comply with any requirement of this  
15 Decree;

16 (2) In the event or upon the discovery of a release or threatened release not addressed  
17 by this Decree;

18 (3) Upon Ecology's determination that action beyond the terms of this Decree is  
19 necessary to abate an emergency situation which threatens public health or welfare or the  
20 environment; or

21 (4) Upon the occurrence or discovery of a situation beyond the scope of this Decree  
22 as to which Ecology would be empowered to perform any remedial action or to issue an order  
23 and/or penalty, or to take any other enforcement action. This Decree is limited in scope to the  
24 geographic site described in Exhibit A and to those contaminants that Ecology knows to be at the  
25 site when this Decree is entered.  
26



1 Ecology reserves all rights regarding the injury to, destruction of, or loss of natural  
2 resources resulting from the release or threatened release of hazardous substances from the  
3 Cenex/Quincy Site.

4 Ecology reserves the right to take any enforcement action whatsoever, including a cost  
5 recovery action, against potentially liable persons not party to this Decree. Cenex reserves all  
6 defenses available to it under ch. 70.105D RCW.

#### 7 **XIX. INDEMNIFICATION**

8 Defendant agrees to indemnify and save and hold the State of Washington, its employees,  
9 and agents harmless from any and all claims or causes of action for death or injuries to persons or  
10 for loss or damage to property arising from or on account of acts or omissions of Defendant, its  
11 officers, employees, agents, or contractors in entering into and implementing this Decree.  
12 However, the Defendant shall not indemnify the State of Washington nor save nor hold its  
13 employees and agents harmless from any claims or causes of action arising out of the negligent  
14 acts or omissions of the State of Washington, or the employees or agents of the State, in  
15 implementing the activities pursuant to this Decree.

#### 16 **XX. COMPLIANCE WITH APPLICABLE LAWS**

17 A. All actions carried out by Defendant pursuant to this Decree shall be done in  
18 accordance with all applicable federal, state, and local requirements, including requirements to  
19 obtain necessary permits, except as provided in paragraph B of this section.

20 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters  
21 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing  
22 local government permits or approvals for the remedial action under this Decree that are known  
23 to be applicable at the time of entry of the Decree have been included in Exhibit B, the Cleanup  
24 Action Plan, and are binding and enforceable requirements of the Decree.

25 Defendant has a continuing obligation to determine whether additional permits or  
26 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial

1 action under this Decree. In the event either Defendant or Ecology determines that additional  
2 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
3 remedial action under this Decree, it shall promptly notify the other party of this determination.  
4 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the  
5 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult  
6 with the appropriate state and/or local agencies and provide Ecology with written documentation  
7 from those agencies of the substantive requirements those agencies believe are applicable to the  
8 remedial action. Ecology shall make the final determination on the additional substantive  
9 requirements that must be met by Defendant and on how Defendant must meet those  
10 requirements. Ecology shall inform Defendant in writing of these requirements. Once  
11 established by Ecology, the additional requirements shall be enforceable requirements of this  
12 Decree. Defendant shall not begin or continue the remedial action potentially subject to the  
13 additional requirements until Ecology makes its final determination.

14 Ecology shall ensure that notice and opportunity for comment is provided to the public  
15 and appropriate agencies prior to establishing the substantive requirements under this section.

16 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
17 exemption from complying with the procedural requirements of the laws referenced in RCW  
18 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for  
19 the State to administer any federal law, the exemption shall not apply and the Defendant shall  
20 comply with both the procedural and substantive requirements of the laws referenced in RCW  
21 70.105D.090(1), including any requirements to obtain permits.

## 22 **XXI. REMEDIAL AND INVESTIGATIVE COSTS**

23 The Defendant agrees to pay costs incurred by Ecology pursuant to this Decree. These  
24 costs shall include work performed by Ecology or its contractors for, or on, the site under ch.  
25 70.105D RCW both prior to and subsequent to the issuance of this Decree for investigations,  
26 remedial actions, and Decree preparation, negotiations, oversight and administration. Ecology's

1 costs shall include remedial costs as defined in WAC 173-340-550(2). The Defendant agrees to  
2 pay the required amount within ninety (90) days of receiving from Ecology an itemized statement  
3 of costs that includes a summary of costs incurred, an identification of involved staff, and the  
4 amount of time spent by involved staff members on the project. A general statement of work  
5 performed will be provided upon request. Itemized statements shall be prepared quarterly.  
6 Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will  
7 result in interest charges.

## 8 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

9 If Ecology determines that Defendant has failed without good cause to implement the  
10 remedial action, Ecology may, after notice to Defendant, perform any or all portions of the  
11 remedial action that remain incomplete. If Ecology performs all or portions of the remedial  
12 action because of the Defendant's failure to comply with its obligations under this Decree,  
13 Defendant shall reimburse Ecology for the costs of doing such work in accordance with Section  
14 XXI, provided that Defendant is not obligated under this section to reimburse Ecology for costs  
15 incurred for work inconsistent with or beyond the scope of this Decree.

## 16 **XXIII. FIVE YEAR REVIEW**

17 As remedial action, including ground water monitoring, continues at the site, the parties  
18 agree to review the progress of remedial action at the site, and to review the data accumulated as  
19 a result of site monitoring as often as is necessary and appropriate under the circumstances. At  
20 least every five years the parties shall meet to discuss the status of the site and the need, if any, of  
21 further remedial action at the site. Ecology reserves the right to require further remedial action at  
22 the site under appropriate circumstances. This provision shall remain in effect for the duration of  
23 the Decree.

## 24 **XXIV. PUBLIC PARTICIPATION**

25 Ecology shall maintain the responsibility for public participation at the site. However,  
26 Defendant shall cooperate with Ecology and, if agreed to by Ecology, shall:

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, Remedial Investigation/Feasibility Study reports and engineering design reports. Ecology will finalize (including editing if necessary) and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Defendant prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments;

C. Participate in public presentations on the progress of the remedial action at the site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

D. In cooperation with Ecology, arrange and/or continue information repositories to be located at Quincy City Hall, Quincy, Washington; and Grant County Health District, Ephrata, Washington; and Ecology's Eastern Regional Office at N. 4601 Monroe, Spokane, Washington. At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air monitoring data; remedial actions plans, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Decree shall be promptly placed in these repositories.

## XXV. DURATION OF DECREE

This Decree shall remain in effect and the remedial program described in the Decree shall be maintained and continued until the Defendant has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed.

1                                   **XXVI. COVENANT NOT TO SUE / REOPENERS**

2           A.     In consideration of the Defendants' compliance with the terms and conditions of  
3 this Decree, Ecology agrees that compliance with this Decree shall stand in lieu of any and all  
4 administrative, legal, and equitable remedies and enforcement actions available to the State  
5 against the Defendants regarding all matters within the scope of this Decree.

6           B.     Reopeners: In the following circumstances, Ecology may exercise its full legal  
7 authority to address releases of hazardous substances at the Site, notwithstanding the Covenant  
8 Not To Sue set forth above:

9                   (1)     In the event Defendants fail to comply with the terms and conditions of  
10 this Decree, including all exhibits, and after written notice of non-compliance, such failure is not  
11 cured by Defendants within thirty (30) days of receipt of notice of non-compliance.

12                   (2)     In the event factors not known at the time of entry of this Decree and not  
13 disclosed to Ecology are discovered and such factors present a previously unknown threat to  
14 human health or the environment and are not addressed by the Cleanup Action Plan, attached  
15 hereto as Exhibit B.

16                   (3)     Upon Ecology's determination that actions beyond the terms of this  
17 Decree are necessary to abate an emergency or endangerment situation which threatens public  
18 health, welfare, or the environment.

19                   (4)     In the event that the results of ground water monitoring indicate that  
20 cleanup standards are being exceeded.

21           C.     Applicability: The Covenant Not To Sue set forth above shall have no  
22 applicability whatsoever to:

- 23                   (1)     Criminal liability;
- 24                   (2)     Actions against PLP's who are not parties to this Decree;
- 25                   (3)     Liability for damages for injury to, destruction of, or loss of natural  
26 resources; and

1 (4) Determinations pursuant to ground water monitoring that show that  
2 cleanup levels are being exceeded.

3 D. Ecology retains all of its legal and equitable rights against all persons except as  
4 otherwise provided in this Decree.

5 **XXVII. CONTRIBUTION PROTECTION**

6 With regard to claims for contribution against the Defendants, the parties intend that the  
7 Defendants will obtain protection against claims for contribution for matters addressed in this  
8 Decree pursuant to RCW 70.105D.040(4)(d).

9 **XXVIII. CLAIMS AGAINST THE STATE**

10 Defendant hereby agrees that it will not seek to recover any costs accrued in  
11 implementing the remedial action required by this Decree from the State of Washington or any of  
12 its agencies; and further, that the Defendant will make no claim against the State Toxics Control  
13 Account or any Local Toxics Control Account for any costs incurred in implementing this  
14 Decree. Except as provided above, however, Defendant expressly reserves its right to seek to  
15 recover any costs incurred in implementing this Decree from any other potentially liable person.

16 **XXIX. EFFECTIVE DATE**

17 This Decree is effective upon the date it is entered by the Court.

18 **XXX. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

19 This Decree has been the subject of public notice and comment under RCW  
20 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a  
21 more expeditious cleanup of hazardous substances at the site.

22 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at  
23 the option of any party and the accompanying Complaint shall be dismissed without costs and  
24 without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

1 STATE OF WASHINGTON  
2 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
Attorney General

3  
4 JAMES PENDOWSKI  
5 Program Manager  
6 Toxics Cleanup Program

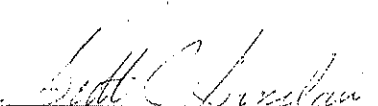
KEN LEDERMAN, WSBA #26515  
Assistant Attorney General

7 Date: \_\_\_\_\_

Date: \_\_\_\_\_

8 CENEX HARVEST STATES  
9 COOPERATIVES

OGDEN, MURPHY & WALLACE

10   
11 By: William F. Joyce  
12 AS: Vice President

WILLIAM F. JOYCE, WSBA #15797  
Attorney for Defendant

13 Date: 12/14/2000

Date: \_\_\_\_\_

14 DATED this 15 day of December 2000.

15  
16  
17 JUDGE  
18 Grant County Superior Court

19 F: CENEX QUINCY FINAL CONSENT DECREE  
20  
21  
22  
23  
24  
25  
26

1 STATE OF WASHINGTON  
2 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE  
Attorney General

3  
4 JAMES PENDOWSKI  
5 Program Manager  
6 Toxics Cleanup Program

KEN LEDERMAN, WSBA #26515  
Assistant Attorney General


7 Date: \_\_\_\_\_

Date: \_\_\_\_\_

8 CENEX HARVEST STATES  
9 COOPERATIVES

OGDEN, MURPHY & WALLACE

10 By: \_\_\_\_\_  
11 As: \_\_\_\_\_

  
WILLIAM F. JOYCE, WSBA #15797  
Attorney for Defendant

12 Date: \_\_\_\_\_

Date: December 14, 2000

13  
14 DATED this \_\_\_\_\_ day of \_\_\_\_\_, .

15  
16  
17 JUDGE  
18 Grant County Superior Court

19 F: CENEX QUINCY FINAL CONSENT DECREE  
20  
21  
22  
23  
24  
25  
26





STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N. Monroe Street • Spokane, Washington 99205-1295 • (509) 456-2926

*note  
spokane*

July 13, 2004

Mr. Jerry Eide  
Cenex Harvest States Cooperatives  
763 Willoughby Lane  
Stevensville, MT 59870

Dear Mr. Eide:

Subject: Site Coordinator, Cenex/Quincy Site

In accordance with Section VII of Consent Decree DE-00TCPER-1815 between Ecology and Cenex Harvest States Cooperatives, this letter constitutes notice that Ecology will be changing Site Coordinators.

Please change your Ecology contact to:

Dave George  
Hydrogeologist  
Washington Department of Ecology  
Toxics Cleanup Program  
4601 N. Monroe St.  
Spokane, WA 99205-1295

(509) 329-3520

Sincerely,

Flora Goldstein  
Section Manager  
Toxics Cleanup Program  
Eastern Regional Office

Cc: Paul Grabau, Farallon Consulting,  
Paul Michel  
Bill Joyce, Attorney at Law  
Donna Foster, TCP/HQ



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

4601 N. Monroe Street • Spokane, Washington 99205-1295 • (509) 456-2926

February 20, 2004

Mr. Jerry Eide  
Cenex Harvest States Cooperatives  
763 Willoughby Lane  
Stevensville, MT 59870

Dear Mr. Eide:

Subject: Site Coordinator, Cenex/Quincy Site

In accordance with Seciton VII of Consent Decree DE-00TCPER-1815 between Ecology and Cenex Harvest States Cooperatives, this letter constitutes notice that Ecology will be changing Site Coordinators.

Please change your Ecology contact to:

Flora Goldstein  
Section Manager  
Washington Department of Ecology  
Toxics Cleanup Program  
N. 4601 Monroe  
Spokane, WA 99205-1295

(509) 329-3568

I am transferring to another position within Ecology. I have enjoyed working with you and the others involved in this project, and wish you the best of good fortune in the future.

If you have any questions, please contact me by March 5 at (509) 329-3562.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy J. Gregory", is written over the typed name.

Guy J. Gregory  
Senior Hydrogeologist  
Toxics Cleanup Program  
Eastern Regional Office

Cc: Paul Grabau, Farallon Consulting,  
Paul Michel  
Bill Joyce, Attorney at Law  
Donna Foster, TCP/HQ